IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.383 OF 2005

Mrs.Nilufar Tohebali Shaikh @
Nilufar Tobibar Shaikh & Ors. ...Applicants

Versus

State (at the instance of SB-I
C.I.D. 'l' Branch, Mumbai. ...Respondent

.....

Mr.V.V.Shetye for Applicants.

Mr.V.B.Konde-Deshmukh, A.P.P. for Respondent.

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CORAM: A.M.KHANWILKAR, J.

NOVEMBER 17, 2005.

P.C.

1. Heard Counsel for the Applicants.

2. I see no reason to depart from the conclusion reached by the Court below in recording finding of guilt against the Applicants. The reasons stated in Paragraph Nos.3 and 4 of the Judgment are unexceptionable.

3. To get over this position, Counsel for the Applicants contends that neither the concerned police officers bothered to verify the documents relied upon by the Applicants, nor the Court has considered the same, which documents would indicate that the Applicants were not the foreign nationals.

4. This submission clearly overlooks that the documents which the Applicants seek to rely, have not been proved in evidence. This aspect has been considered by the Court below in Paras 3 and 4 of the Judgment. The Court below has rightly observed that for the nature of proceedings on hand, it was the duty of the accused to prove the fact that they are not foreigners. For that purpose, it was expected from the Applicants/accused to prove the documents, on which the Applicants were relying. That has not been done in the present case. Mere production of the documents along with a written application cannot result in the situation that the documents have been proved in evidence. The Applicants have failed to prove the documents as is required by law. If the documents in question

which are pressed into service on behalf of the Applicants have not been proved in evidence, the same will be of no avail and cannot be looked into in the present case. To illustrate the point, I am in agreement with the observation made by the lower Court in para 3 of the Judgment that the accused have failed to produce in Court the original of the certificate on which they were relying, hence, the same cannot be taken into account. Once the factum that accused are not foreigners has not been established, the consequence is to record finding of guilt against the Applicants/accused, which has been rightly done by the Court below.

5. Viewed in this perspective, no interference is warranted. Hence, dismissed.

6. In view of this order, Criminal Application No.7215 of 2005 is also rejected.

A.M.KHANWILKAR, J.